

Message Text

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R 031641Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY TEL AVIV

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FOLLOWING REPEAT STATE 228699 ACTION AMMAN INFO SECDEF DSAA

MARITIME ADMIN DATED 25 SEP 75

QUOTE

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E.O. 11652: N/A

TAGS: BEXP, BGEN, MASS, JO, US

SUBJECT: U.S. FLAG SHIPPING REQUIREMENTS UNDER FMSA

REF : AMMAN 6412, DTG 211456Z SEP 1975

1. REQUIREMENTS FOR USE OF US FLAG VESSELS FOR CARRIAGE
OF FMS CARGOES DEPEND UPON WHETHER SALE IS FINANCED BY USG.

2. ARTICLES PURCHASED FOR CASH AND DELIVERED TO PURCHASER'S
SHIPPING AGENT IN US MAY BE SHIPPED ON EITHER US OR FOREIGN
FLAG VESSELS UNDER WHATEVER COMMERCIAL ARRANGEMENTS MAY BE
MADE BY PURCHASER'S AGENT. WHERE DOD PROVIDES DELIVERY
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TO PORT IN PURCHASING COUNTRY AS A DEFENSE SERVICE UNDER

FMSA, DOD WILL UTILIZE US FLAG VESSELS IN ACCORDANCE WITH POLICY GOVERNING PROCUREMENT OF SHIPPING FOR US MILITARY CARGOES SET FORTH IN 10 U.S.C. 2631.

3. USE OF FMS CREDIT FUNDS FOR FOREIGN FLAG VESSEL COSTS IS REGARDED AS "PROCUREMENT OUTSIDE THE UNITED STATES" PROHIBITED BY SECTION 42(C) OF FMSA IN ABSENCE OF DETERMINATION BY DOD (TO WHICH PRESIDENT'S AUTHORITY UNDER THIS SECTION IS DELEGATED).

4. ARTICLES PURCHASED WITH FUNDS MADE AVAILABLE AS DIRECT

CREDITS UNDER FMSA MUST BE SHIPPED ON US FLAG VESSELS UNLESS EXCEPTION GRANTED BY DOD. STANDARD DOD CREDIT AGREEMENTS SIGNED BY JORDAN IN PREVIOUS YEARS HAVE CONTAINED FOLLOWING CLAUSE:

"ALL OCEAN TRANSPORTATION OF THE DEFENSE ARTICLES SHALL BE ON VESSELS OF UNITED STATES REGISTRY. THE GOVERNMENT OF THE UNITED STATES WILL GIVE SYMPATHETIC CONSIDERATION ON A CASE-BY-CASE BASIS TO REQUESTS BY THE BORROWER JUSTIFYING SHIPMENT ON VESSELS OF THE REGISTRY OF THE BORROWER. CONSIDERATION WILL BE GIVEN TO SECURITY REQUIREMENTS OF THE BORROWER TO ASSURE SAFE ARRIVAL."

5. RECENT DISCUSSIONS AMONG STATE, DEFENSE, TREASURY AND MARITIME ADMINISTRATION HAVE RESULTED IN CONCLUSION THAT US CARGO PREFERENCE LAWS, INCLUDING 15 U.S.C. 616 A AND 46 U.S.C. 1241(B)(1), REFLECT CONSISTENT PUBLIC POLICY OF MAXIMUM UTILIZATION OF US MERCHANT MARINE FOR OCEAN TRANSPORTATION OF GOODS FINANCED UNDER USG CREDIT AND GUARANTY PROGRAMS. FYI. ALTHOUGH NO DEFINITIVE RULING BY A US COURT OR THE ATTORNEY GENERAL HAS BEEN RENDERED ON APPLICATION OF THOSE STATUTES TO FMS, END FYI IT WAS DETERMINED ADMINISTRATIVELY IN JUNE 1975 THAT FUTURE FMS CREDIT AGREEMENTS AND LOAN AGREEMENTS COVERED BY FMS GUARANTIES WILL GIVE EFFECT TO THAT POLICY BY INCLUDING FOLLOWING CLAUSE (SIMILARLY WORDED CLAUSE INCLUDED IN DOLLARS 30 MILLION FMS LIMITED OFFICIAL USE

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GUARANTEED LOAN AGREEMENT SIGNED BY GOJ AND FEDERAL FINANCING BANK ON JUNE 26, 1975.):

"MARINE TRANSPORTATION

"ALL DEFENSE ARTICLES, THE PURCHASE OF WHICH IS TO BE FINANCED HEREUNDER, AND WHICH MAY BE TRANSPORTED BY OCEAN VESSEL, SHALL BE TRANSPORTED IN VESSELS OF

UNITED STATES REGISTRY UNLESS A WAIVER OF THIS REQUIREMENT IS OBTAINED.

"IF A WAIVER IS NECESSARY, THE BORROWER'S REQUEST SHOULD BE ADDRESSED TO THE DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY, RM. 4E837, DEPARTMENT OF DEFENSE, WASHINGTON, D.C. 20301, WITH A COPY TO THE DIRECTOR, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, D.C. 20230.

"A WAIVER MAY BE GRANTED BY THE DIRECTOR, DEFENSE SECURITY ASSISTANCE AGENCY, UPON REQUEST BY THE BORROWER:

"(1) WHERE THE BORROWER PROPOSED TO TRANSPORT NOT MORE THAN FIFTY PERCENT (50) OF THE SHIPMENT ABOARD VESSELS OF ITS NATIONAL FLAG, UPON THE CONDITION THAT THE IMPORTING COUNTRY DOES NOT DISCRIMINATE AGAINST VESSELS OF U.S. REGISTRY (WHEN SO REQUESTING, THE BORROWER MUST SUBMIT ITS REQUEST SUFFICIENTLY IN ADVANCE OF THE INTENDED SHIPPING DATE TO ENABLE VERIFICATION OF THE TREATMENT ACCORDED VESSELS OF U.S. REGISTRY BY THE IMPORTING NATION, AND TO PROCESS THE APPLICATION.); OR

"(2) ON THE BASIS OF THE NON-AVAILABILITY OF VESSELS OF UNITED STATES REGISTRY (WHEN SO REQUESTING, THE BORROWER MUST ESTABLISH AND DOCUMENT THAT IT HAS MADE A REASONABLE, TIMELY AND BONA FIDE EFFORT TO ARRANGE SHIPMENT ON VESSELS OF UNITED STATES REGISTRY, AND THAT SUCH VESSELS ARE NOT AVAILABLE. SUCH APPLICATION MUST BE SUBMITTED SUFFICIENTLY IN ADVANCE OF THE INTENDED SHIPPING DATE TO ENABLE VERIFICATION LIMITED OFFICIAL USE

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OF THE NON-AVAILABILITY OF VESSELS OF UNITED STATES REGISTRY AND TO PROCESS THE APPLICATION.);

"(3) ON THE BASIS OF THE NON-AVAILABILITY OF VESSELS OF UNITED STATES REGISTRY AT REASONABLE RATES (WHEN SO REQUESTING, THE BORROWER MUST ESTABLISH AND DOCUMENT ALL APPLICABLE COMPARATIVE RATES, AND MUST SUBMIT SUCH INFORMATION SUFFICIENTLY IN ADVANCE OF THE INTENDED SHIPPING DATE TO ENABLE VERIFICATION OF THE NON-AVAILABILITY OF VESSELS OF UNITED STATES REGISTRY AT REASONABLE RATES AND TO PROCESS THE APPLICATION.);

"(4) ON THE BASIS OF SECURITY REQUIREMENTS OF THE BORROWER TO ASSURE SAFE ARRIVAL. (WHEN SO REQUESTING,

THE BORROWER MUST PROVIDE THE SPECIFIC SECURITY OR SAFETY REQUIREMENTS AND INFORMATION INVOLVED IN SUCH SHIPMENTS SUFFICIENTLY IN ADVANCE OF THE INTENDED SHIPPING DATE TO ENABLE VERIFICATION OF THE SECURITY OR SAFETY REQUIREMENTS AND TO PROCESS THE APPLICATION.)

"APPROPRIATE INSTRUCTIONS WILL BE ISSUED BY THE DEPARTMENT OF DEFENSE TO THE BORROWER CONCERNING THE ADMINISTRATION AND REGULATION OF OCEAN SHIPMENTS PURSUANT TO THIS PROVISION."

6. EFFECT OF ABOVE-QUOTED REQUIREMENT WITH RESPECT TO OCEAN CARRIAGE OF DEFENSE ARTICLES FINANCED WITH FMS CREDITS OR GUARANTEED LOANS IS THAT, EXCEPT WHERE WAIVER GRANTED IN CIRCUMSTANCES DESCRIBED IN PARA 4,

FMS FINANCED CARGO WILL HAVE TO BE TRANSPORTED ON U.S. FLAG VESSELS. THIS REQUIREMENT WILL BE CONTINUOUSLY MONITORED BY DOD, ASSISTED BY MARITIME ADMINISTRATION. FMS CARGOES FOR JORDAN ARE OFTEN LIKELY TO BE A MIX OF FMS FINANCED AND CASH PURCHASES. ACCORDINGLY, IF GOJ WERE TO ACCEPT TENDER FROM OTHER THAN U.S. FLAG CARRIER, CONSIDERABLE EXPENSE, DELAY AND CONFUSION MIGHT RESULT IN ATTEMPTING TO SEGREGATE CARGOES SUBJECT TO ABOVE-DESCRIBED US FLAG REQUIREMENTS FROM THOSE WHICH ARE NOT. ACCEPTANCE OF TENDER FROM US CARRIER, ON LIMITED OFFICIAL USE

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OTHER HAND, WOULD FACILITATE COMPLIANCE WITH TERMS OF FMS CREDIT AND GUARANTEED LOAN AGREEMENTS, AND AVOID OBVIOUS ADMINISTRATIVE DIFFICULTIES IN ATTEMPTING TO SEGREGATE CARGOES ON BASIS OF SOURCE OF FINANCING FOR FMS PURCHASES.

7. FOREGOING REQUIREMENTS MAY BE DESCRIBED TO GOJ AS USG REGULATIONS IMPLEMENTING FOREIGN MILITARY SALES ACT IN MANNER CONSISTENT WITH PUBLIC POLICY OF U.S. CARGO PREFERENCE LAWS. THESE REGULATIONS WILL HAVE FORCE AND EFFECT OF LAW AND WILL ALSO BE CONTRACTUALLY BINDING ON ALL PARTIES TO FUTURE FMS CREDIT AND GUARANTY TRANSACTIONS. KISSINGER
UNQUOTE

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